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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 19, 2002

APPLICATION OF

TENASKA VIRGINIA PARTNERS, L.P.

CASE NO. PUE-2001-00039

For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work

FINAL ORDER

On January 16, 2001, Tenaska Virginia Partners, L.P. ("Tenaska" or "Applicant") filed an Application for approval of a certificate of public convenience and necessity pursuant to § 56-265.2 of Chapter 10.1 of Title 56 of the Code of Virginia ("Code") to construct and operate a 900 MW natural gas-fired electric generating facility ("Facility") in Fluvanna County, Virginia. Tenaska requested an exemption from the provisions of Chapter 10 of the Code (§§ 56-232, *et seq.*). The Applicant also requested interim authority under § 56-234.3 of the Code to allow it to make financial expenditures and undertake preliminary construction work. On April 20, 2001, the Applicant filed additional information necessary for the Commission's environmental assessment of the Facility.

On May 4, 2001, the Commission entered an Order for Notice and Hearing providing an opportunity for interested persons to file comments, directing the Commission Staff ("Staff") to investigate the Application, and setting a hearing in this matter. The evidentiary hearing was held on July 24, 2001, before Hearing Examiner Michael D. Thomas. Richard D. Gary, Esquire, and John M.

Holloway, III, Esquire, appeared on behalf of Tenaska. C. Meade Browder, Jr., Esquire, and Kara Austin Hart, Esquire, appeared on behalf of Staff. Kodwo Ghartey-Tagoe, Esquire, appeared on behalf of Columbia Gas of Virginia, Inc. ("Columbia Gas"). Eight public witnesses testified at the hearing.

On October 23, 2001, Hearing Examiner Michael D. Thomas entered his Report in which the Examiner summarized the record, and reviewed and analyzed the evidence and issues in this proceeding.¹ The Examiner recommended that the Commission grant Tenaska interim approval, pursuant to § 56-234.3 of the Code, to make financial expenditures and undertake preliminary construction work on the Facility. The Examiner also recommended that the Commission grant Tenaska preliminary approval, pursuant to § 56-265.2 of the Code, to construct the Facility, subject to certain conditions and pending receipt and verification of environmental or other permits necessary to operate the Facility. In addition, the Examiner found that the Commission should grant Tenaska an exemption from Chapter 10 of Title 56 of the Code.

On January 16, 2002, a majority of the Commission issued an Order remanding the case for further proceedings and recommendations.² On January 24, 2002, the Hearing Examiner issued a ruling that established a procedural schedule and hearing date to address the remanded issues. The Examiner's ruling also identified the following areas where additional evidence was required by the Order remanding this case: (1) rates; (2) environment; (3) economic development; and (4) public interest, which included matters attendant to the use of low-sulfur fuel oil, back-up or alternative sources

¹ Report of Michael D. Thomas, Hearing Examiner, Case No. PUE-2001-00039 (Oct. 23, 2001) ("Report").

² Application of Tenaska Virginia Partners, LP, For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work, Case No. PUE-2001-00039, Order (Jan. 16, 2002).

of water, and the emergency management plan. On March 13, 2002, the evidentiary hearing on remand was convened as scheduled by the Examiner. Mr. Gary, Mr. Holloway, and Kevin J. Finto, Esquire, appeared on behalf of Tenaska. William H. Chambliss, Esquire, appeared on behalf of Staff, and Columbia Gas did not participate. Ten public witnesses appeared at the hearing.

On April 3, 2002, Hearing Examiner Michael D. Thomas entered his Report on Remand, in which the Examiner summarized, reviewed, and analyzed the additional evidence submitted on remand.³ In the Report on Remand, the Examiner recommended that the Commission: (1) grant Tenaska interim approval, pursuant to § 56-234.3 of the Code, to make financial expenditures and undertake preliminary construction work on the Facility; (2) grant Tenaska approval, pursuant to § 56-265.2 of the Code, to construct and operate the Facility; and (3) adopt the findings contained in the Report on Remand.

The Hearing Examiner found, in the Report on Remand, that Tenaska met its evidentiary burden of proving the Facility, and its associated facilities: (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest. The Report on Remand also included the following findings:

(1) The proposed Facility will have no material adverse effect on the rates paid by Virginia consumers for natural gas, water or sewer service;

(2) The current level of air quality in Fluvanna County is good, and is in attainment of all National Ambient Air Quality Standards ("NAAQS");

³ Report on Remand of Michael D. Thomas, Hearing Examiner, Case No. PUE-2001-00039 (April 3, 2002) ("Report on Remand").

(3) Tenaska's cumulative impacts analysis employed in this case is reasonable, as it tends to greatly overstate potential ground level concentrations of nitrogen oxides, sulfur dioxide, particulate matter, and carbon monoxide from existing and proposed sources, and potential ground level concentrations of ozone;

(4) Tenaska's cumulative impacts analysis adequately demonstrates that the Facility's emissions will have an insignificant impact on air quality in Fluvanna County and surrounding counties;

(5) Tenaska's cumulative impacts analysis adequately demonstrates that the Facility's emissions, when combined with the emissions from 22 other existing or proposed facilities, will have no material adverse effect on air quality in Fluvanna County and surrounding counties;

(6) Because the cumulative impacts analysis completed by Tenaska shows no significant deterioration of air quality and no exceedence of the NAAQS, the Facility's emissions will have no material adverse effect on economic development in Fluvanna County and surrounding counties;

(7) The Facility's use of 0.01% low-sulfur fuel oil as a backup fuel for no more than 720 hours during the period October through March is not contrary to the public interest, will have no material adverse effect on traffic in the area surrounding the Facility, will have no material adverse effect on air quality in Fluvanna County and surrounding areas, and will promote the public interest by maintaining system reliability on the electric grid;

(8) Tenaska established its need for a backup water supply from a reservoir to be constructed by an affiliate in Buckingham County and transported to Tenaska's Facility by East Coast Transport, Inc., and the reservoir and its associated facilities will have no material adverse effect on the environment; and

(9) The Integrated Contingency Plan that Tenaska, with the assistance of the County, will develop for the Facility adequately addresses: the concerns that the Applicant's emergency management personnel were not up to the task of responding to an emergency at the Facility; procedures for contacting Tenaska personnel in the event of an actual emergency; and the provision of realistic training for the County's emergency management personnel.

NOW THE COMMISSION, having considered the record, the Hearing Examiner's Report, the Hearing Examiner's Report on Remand, and the applicable law, is of the opinion and finds that the Hearing Examiner's findings and recommendations in the Report on Remand are reasonable and should be adopted as set forth below.

The Commission's Order remanding this case identified six general criteria, or areas of analysis, that apply to electric generating plant applications. The six general criteria are as follows: (1) reliability;⁴ (2) competition;⁵ (3) rates;⁶ (4) environment;⁷ (5) economic development;⁸ and (6) public interest.⁹ We have evaluated these six areas. Pursuant to § 56-580 D, we find that the Facility and associated facilities: (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; and (ii) are not otherwise contrary to the public interest.

⁴ Va. Code Ann. §§ 56-580 D(i) and 56-46.1 A.

⁵ Va. Code Ann. § 56-596 A.

⁶ Va. Code Ann. §§ 56-580 D(ii); 20 VAC 5-302-20 14. *See also Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice at 6 (Dec. 14, 2001).

⁷ Va. Code Ann. §§ 56-580 D and 56-46.1 A.

⁸ Va. Code Ann. §§ 56-46.1 and 56-596 A.

⁹ Va. Code Ann. §§ 56-580 D(ii).

Accordingly, we grant Tenaska approval, and a certificate of public convenience and necessity, to construct and operate the Facility. We note that the Examiner recommended approval under § 56-265.2 of the Code. We take this opportunity, however, to affirm that § 56-580 D supplants §§ 56-234.3 and 56-265.2 of the Code in the Commission's approval process for electric generating facilities on and after January 1, 2002.¹⁰

The Hearing Examiner also recommended that the Commission grant Tenaska interim approval under § 56-234.3 to make financial expenditures and undertake preliminary construction work. We note, however, that interim approval is not necessary, as today we authorize Tenaska to construct and operate the Facility.

Accordingly, IT IS ORDERED THAT:

(1) The findings of the Hearing Examiner's April 3, 2002, Report on Remand are hereby adopted.

(2) Pursuant to § 56-580 D of the Code of Virginia, Tenaska is hereby granted authority, and a certificate of public convenience and necessity, to construct and operate the 900 MW natural gas-fired electric generating facility in Fluvanna County, Virginia, as described in this proceeding.

(3) The certificate of public convenience and necessity granted herein shall be conditioned upon the receipt of all environmental and other permits necessary to operate the Facility.

¹⁰ See, e.g., *Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice at 2 (Dec. 14, 2001); *Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case No. PUE-2001-00313, Order at 5 (Aug. 3, 2001).

(4) As not objected to by Tenaska, the certificate of public convenience and necessity granted herein shall expire in two years from the date of this order, if construction on the Facility has not commenced.

(5) Tenaska shall comply with the Stipulation entered into in this case, which recognizes that Tenaska will construct and own a natural gas lateral from the Transco natural gas transmission line located on the site of the Facility, and that the natural gas lateral will be used solely to provide natural gas to the Facility.

(6) The facilities authorized herein shall be exempt from the provisions of Chapter 10 of Title 56 of the Code of Virginia.

(7) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.